

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MICHAEL A. CLYBURN,	)	
Personal Representative of the Estate of	)	
MARY F. CLYBURN, deceased,	)	
	)	Case No.: 4:12-CV-1215-JAR
Plaintiff,	)	
	)	
v.	)	
	)	
THI OF MISSOURI AT GRAVOIS, L.L.C., et al.,	)	
	)	
Defendants.	)	

**ORDER APPROVING WRONGFUL DEATH SETTLEMENT AND  
ALLOCATION OF SETTLEMENT PROCEEDS**

Now on this 14<sup>th</sup> day of November, 2013, the plaintiffs' Motion for Approval of Wrongful Death Settlement and Allocation of Settlement Proceeds comes on for hearing by this Court. Michael A. Clyburn was present along with his counsel Kenneth K. Vuylsteke. Defendant THI of Missouri at Gravois, LLC was present through counsel, Richard M. Acosta. Also at this time, the Court reviews the "Allocation of Settlement Proceeds" and the Confidential Settlement Agreement and Release provided to the Court, *in camera*.

By their submissions and the testimony of Michael A. Clyburn, the parties announce that a settlement of plaintiff's claims arising out of the death of Mary F. Clyburn has been reached between the parties. The settlement against defendants shall be for the sum of money set forth in the Allocation of Settlement Proceeds and will settle all claims against defendant as a result of the alleged nursing home negligence which allegedly caused injuries to and the wrongful death of Mary F. Clyburn and is contingent only upon the approval of this Court. Plaintiff Michael A. Clyburn has filed with the Court his Motion for Approval of Wrongful Death Settlement, has

testified before this Court, and has requested that this Court enter its Order in accordance therewith. The Court after reviewing the evidence regarding the matter, does hereby:

**FIND, ORDER, ADJUDGE AND DECREE AS FOLLOWS:**

1. This is a claim for nursing home negligence resulting in the alleged wrongful death of Mary F. Clyburn and is brought pursuant to RSMo. 537.080, et seq. The matter was filed in the Circuit Court of St. Louis County, Missouri but was removed to this Court on the basis of diversity jurisdiction.

2. Plaintiff Michael A. Clyburn is the natural son of the decedent, Mary F. Clyburn. He has also been appointed the Personal Representative of the Estate of Mary F. Clyburn. The court finds that plaintiff Michael A. Clyburn is the sole Class 1 heir under the meaning of RSMo. 537.080.1. As such, plaintiff Michael A. Clyburn is the proper party to bring this action pursuant to RSMo. 537.080, et seq.

3. The court finds that Michael A. Clyburn, Individually, and as Personal Representative of the Estate of Mary F. Clyburn, has agreed upon a distribution of the net settlement proceeds as set forth in the Allocation of Settlement Proceeds. The Court finds that the proposed apportionment of the net proceeds of the settlement as set forth in the Allocation of Settlement Proceeds is acceptable.

4. While the court makes no determination herein of the liability of defendant, plaintiff Michael A. Clyburn, Individually, and as Personal Representative of the Estate of Mary F. Clyburn and defendant have nevertheless negotiated a compromise and settlement, the terms of which have been reviewed by the court.

5. Michael A. Clyburn, Individually, and as Personal Representative of the Estate of Mary F. Clyburn, and through his attorneys of record, believes and has represented to the court

that the settlement set forth in the Application for Approval of Wrongful Death Settlement is fair and reasonable concerning all of the facts and circumstances, and that its approval by the court will be in the best interests of plaintiff.

6. The Court finds that the confidential settlement is proper and in the best interests of the parties and approves the same and further finds that the terms of the confidential settlement are a fair and reasonable compromise and settlement of all claims brought or which could have been brought arising out of the alleged personal injuries, emotional suffering, and death of Mary F. Clyburn and by and on behalf of anyone who has sued or is entitled to sue or join in said claims against defendant and that the allocation of the settlement is fair and reasonable.

7. From the total proceeds, expenses set forth in the "Allocation of Settlement Proceeds," shall be deducted and paid to plaintiff's attorneys. The attorney's fees, set forth in the "Allocation of Settlement Proceeds," shall be deducted and paid to plaintiff's attorneys, as contracted and are found to be reasonable and necessary. The "Allocation of Settlement Proceeds" has been reviewed and for purposes of the settlement, but is withdrawn and will not remain a part of the legal file.

8. The remaining settlement proceeds shall be distributed as follows:

To Michael A. Clyburn, Individually:	0%
--------------------------------------	----

To the Estate of Mary F. Clyburn:	100%
-----------------------------------	------

9. This settlement is hereby approved, and plaintiff Michael A. Clyburn, Individually, and as the Personal Representative of the Estate of Mary F. Clyburn is authorized to immediately execute any and all documents necessary to reach a conclusion of this action including a dismissal with prejudice of the above captioned claim.

10. The court directs plaintiff Michael A. Clyburn, Individually, and as Personal Representative of the Estate of Mary F. Clyburn, to deliver an executed Confidential Settlement Agreement and Release holding defendant harmless from all liability on account of the occurrence described in this matter and the defendant to pay over the proceeds of settlement to the plaintiff and her attorneys. The remaining proceeds may be distributed in accordance with this Order. Plaintiff's counsel shall forward a copy of Medicare's acknowledgement of satisfaction of its claimed right of recovery to defense counsel.

11. The payment of a confidential sum by defendant to plaintiff Michael A. Clyburn, Individually, and as Personal Representative of the Estate of Mary F. Clyburn shall constitute a full and final compromise and settlement of all claims of plaintiff Michael A. Clyburn, Individually, and as Personal Representative of the Estate of Mary F. Clyburn against defendant arising out of the injuries to and death of Mary F. Clyburn. Defendant, their agents, servants, and employees shall be and are hereby forever discharged for any and all liability for any claims arising out of the alleged injuries to and death of Mary F. Clyburn.

IT IS SO ORDERED.

11/14/2013  
Date

John A. Ross  
Hon. John A. Ross

Approved:

/s/ Kenneth K. Vuylsteke

Kenneth K. Vuylsteke MO #30821  
Fox & Vuylsteke, LLP  
110 E. Lockwood, Suite 150  
Webster Groves, MO 63119  
314-961-3222  
314-961-6110 (facsimile)

*Attorneys for Plaintiff*

/s/ Richard M. Acosta

Richard M. Acosta MO #58381  
BK Christopher MO #41697  
Horn, Aylward & Bandy, LLC  
2600 Grand Blvd., Suite 1100  
Kansas City, MO 64108  
816-421-0700  
816-421-0899 (facsimile)

and

Gregory J. Minana MO #38004  
HUSCH BLACKWELL LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
314-480-1500  
314-480-1505 (facsimile)

*Attorneys for Defendant*  
*THI of Missouri at Gravois, LLC*